Stone

Some Notes of the Writings of Professor Fawcett, Mr. Leslie, and Professor Newman on the Land Laws of England

SOME NOTES

ON THE WRITINGS OF

PROFESSOR FAWCETT, MR. LESLIE,

AND

PROFESSOR NEWMAN

ON

THE LAND LAWS OF ENGLAND.

BY

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With an Appendix

CONSISTING OF

FURTHER COMMENTS BY ANOTHER HAND.

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SOME NOTES ON THE LAND LAWS OF ENGLAND.

A FREE COUNTRY must expect that its institutions and its laws will be not only discussed but often vituperated. The extent of such discussions and vituperation will, in general, be proportionate to the true liberty which the country enjoys. In turbulent times beneficial laws and institutions may be overborne and destroyed, but in the main, the goodness of laws and institutions is tested by the fact of their bearing discussion and surviving vituperation.

There is a class of politicians and writers of the present day to whom the landowner is the *bête noire*, and the land laws altogether naught. Sometimes it is the bad laws which have made the landowners bad, sometimes it is the landowners who have made or maintained the bad laws—and sometimes these are made to mutually react on each other till both have attained the very acme of wickedness, and are rapidly hurrying the country into the abyss of ruin, if it be not already there. The land laws of England are not perfect, and the landowners are men—and, no doubt, are not fault-

less—but it appears to me that the laws are, in some cases, misrepresented; that results which have no existence are assumed as facts, and evils alleged to be impending or actually operating, which are purely problematical. It appears to me, also, that in some cases the subject is discussed in a temper and tone wholly unsuitable.

When a popular orator proposes, as one of the remedies for the grievances of Ireland, that some half-dozen of the best managed estates in the country shall be purchased by the Government from the present owners, because they are Englishmen, though they may not wish to sell, and be resold to the occupying tenants because they are Irishmen, though they may not wish to buy, the proposal is startling, and not of obvious utility. And when it is recollected that only some fifteen years ago an Act (The Incumbered Estate Act) was passed for the purpose of bringing into the market Irish estates, mismanaged by reason of the incumbrances of the owners, and with the hope that the sales would attract English and Scotch capital, and, in fact, benefit the country by putting the land into the hands of owners with sufficient means to manage it properly, without regard to the birth-place of such owners, —we are struck with the difference of the policy of Mr. Bright and of the author of the Act in question; but the Act was generally approved of, and was not, I think, opposed by Mr. Bright or any of his school. When, moreover, we consider that the Act has been vigorously carried into effect, so much so that land was

brought into the market to the value (measured by the price) of nearly thirty millions sterling, it is clear that purchaseable land has not, of late years, been a scarce commodity in Ireland. And when we further consider that the policy or expectation of the authors of the Act has (I will not say been disappointed, but) miscarried (so far as regards the attraction of English and Scotch capital), as shown by the fact that these vast purchases have been made by Irishmen, and with Irish money, it is impossible not to see that Mr. Bright's proposal was neither necessary, nor in any sense wise. But the proposal shows that, in the hands of a fervid partisan speaker, whether he speaks sense or its opposite (I wish to avoid offensive expressions) is wholly unimportant to the success of his speech with the bulk of his ordinary admirers. The conditions of public partisan-speaking are pretty generally understood, and when it is possible to extract from these rhetorical vagaries some definite proposal to be acted on, they give to people who think a little for themselves the measure of the practical wisdom of the speaker, if he be sincere. In fact they mislead only those who are born to be misled, or who are ready to receive with applause anything which helps to foster discontent.

The case is different when men of character and position make, in scientific works, statements tending to render their readers dissatisfied with the government and institutions of their country—statements which (whether material to the author's own conclusions or not) are wholly misleading.

Mr. Fawcett's 'Manual of Political Economy' is a work of real merit, and his views and statements will be received by his readers with a confidence of which, in general, they are entirely deserving. But in the chapter headed 'Peasant Proprietors' there are statements which cannot fail, it appears to me, to convey wholly erroneous notions. In that chapter the following statements occur:

'In England many causes combine, not only to prevent 'the partition of large estates into small properties, but also 'to encourage the rapid absorption of small properties which 'were so numerous in former times. The conveyance of land 'in England is cumbrous and costly: the title to a hundred 'acres may often be proved at as little expense and trouble as 'the title to a single acre. The cost of conveying a small 'estate is therefore, in proportion to its value, much greater 'than the cost of conveying a large one. The law of England 'permits land to be entailed to such an extent that a landed 'estate can be settled upon an unborn child, and hence a con-'siderable portion is strictly hereditary property. The power 'of entail is defended because it tends to preserve a landed 'aristocracy, since, if our great landowners were permitted 'freely to sell their titles, a great number of those properties 'which have belonged to the same family for many genera-'tions would quickly be dispersed. *Owing to the fact that 'entailed land can rarely be sold, only a small portion of 'the land of England can properly be considered a mar-'ketable commodity.*'

The above extracts contain an implied censure of the legislature for creating or permitting the continuance of laws which tend to the absorption of small properties, and which have brought about such a state

of things, 'that entailed land can rarely be sold,' and that 'only a small portion of the land in England can properly be considered a marketable commodity.'

Mr. Fawcett is evidently not a lawyer. When he speaks of the power of *entailing* to such an extent that land can be settled on an unborn child, he is probably not aware that the feat can be performed without any reference to the law of entail. It would, perhaps, have been well, for popular purposes, that he had given a definition of his understanding of the terms '*entailed estate*.' In popular understanding (a notion which is not wholly obsolete, and which Mr. Fawcett's language rather fosters than corrects) an entailed estate is an estate so settled that it must descend from father to son, or from parent to child, without any power in the tenant in tail for the time being to disappoint his successor by selling or mortgaging the fee. By a very artificial construction of an Act passed in the time of Edward I. called *The Statute de donis*, there did grow up and existed in England down to the reign of Edward IV. estates tail answering, or supposed to answer, the above description. But in the last-mentioned reign a mode was discovered (due also to the ingenuity of judges) of barring such estates tail, in other words of enabling every tenant in tail in possession to make himself absolute owner of the estate, and as a consequence to sell or mortgage, and so far as the law of devises applied, to dispose by will—or in the absence of any of such dealings, to permit the estate to descend to the heir general, whether the line of entail had or had

not become extinct. The mode by which a tenant in tail could make himself a tenant in fee was, down to a somewhat recent period, absurdly cumbrous, but is now simple, cheap, and expeditious. It may be doubted, however, if a tenant in tail who was disposed to sell or mortgage was ever in a single instance deterred from doing so by the mode of proceeding, cumbrous as it was.

The other gentlemen upon whose essays I venture to write some notes, namely, Mr. Leslie, the writer of an article in the February No. of Fraser's Magazine entitled 'The land system of the country a reason for a Reform of Parliament,' and Mr. Newman, the author of an essay entitled 'The Land Laws,' in a volume of essays with the title of 'Questions for a Reformed Parliament,' appear to be lawyers and to be conversant with the existing laws. They agree with Mr. Fawcett in condemning those laws even more emphatically than he does, and trace out evil results as flowing from them which would hardly have occurred except to gentlemen of a very imaginative turn of mind, stimulated by strong partisan feelings. When Mr. Fawcett states that—*by reason of settlements only a small portion of the land can be considered a marketable commodity*, I can believe that he was not aware that when land is settled, it is by a rare accident if the settlement does not contain a power of sale—so that in the case supposed of a settlement on an unborn child a sale may be made not only during the minority of the child, but even before it is born, and that he was equally unaware that where the power of sale is omitted in a settlement, power is vested in the Court of Chancery

to make a sale whenever it may appear expedient to the parties interested. This power in the court is so far from being a dead letter, that it is acted on in daily practice. Mr. Fawcett's statement, that 'only a small portion of the land of England can be considered a marketable commodity,' is so wide of the mark that it would be more correct to say that, with the exception of Blenheim, Strathfieldsaye, and some three or four other estates in the same category, there is scarcely an acre of land in England that is not saleable. These considerations, which would appear very material, and which must be perfectly known to Mr. Leslie and Mr. Newman, are not permitted by them to interfere with their course of argument. I do not recollect that Mr. Leslie ever refers to these powers by which sales may be effected. Mr. Newman, indeed, after endorsing in his text the statement that the laws 'enable an owner of land by settlement or will so to affect his estate that it cannot possibly be sold in many cases for fifty, and in some cases even for sixty, seventy, or one hundred years,' does, in a note, advert to the powers of sale in settlements, and to the above-mentioned statutable power, but appears to imagine that the effect, upon his argument, of these powers (which in fact destroy it altogether) is disposed of by stating in the note, that 'this is of no great importance, as the purchase-money is liable to be reinvested on other land to be settled to the same uses' What then? the land is saleable, and if sold,—as it very frequently is,—has it not been in the market? and the purchase money being invested on consols or

other securities, commonly remains so invested for years, in no way interfering with the land market,—and very frequently, perhaps most frequently, is never reinvested in land at all, but is paid out as money to the parties who would have been entitled to become absolute owners of the land on which it might have been invested. Is this, on Mr. Newman's part, a candid or reasonable mode of conducting an argument?

Mr. Fawcett further urges that 'the conveyance of land in England is cumbrous and costly.' This general assertion cannot be met by an answer as precise and clear as the answer to his other objections. The meaning is that the cost and trouble are unnecessarily great and may be diminished by legislation. The complaint is of long standing; and gave rise, a few years back, to a commission which sustained the complaint in a learned, elaborate, even rhetorical report. That report was followed by the Act establishing a land registry. That act was framed by a personage of the highest repute as a law reformer, the originator and the most zealous member of the commission. The commission, the report, and the act, all secured the hearty applause of the press, high and low, and, what was still more important to the success of the measure, provided a most tempting bribe to the whole class of solicitors connected with the dealings in land. If a solicitor can prevail on his client to register his title under the Act, he will be able to make out a bill of much the same amount, so far as regards his profit, as on a sale of the estate, while the estate will still remain in the hands of his client to furnish materials for future

bills on mortgaging, settling, and devising. Considering the magnitude (as it was represented) of the evil to be remedied by the Act, the completeness of the remedy, and all other favourable circumstances, it was not doubted that the measure would, in theatrical phrase, prove a 'great success.' The officers appointed to conduct the business were, I believe, all gentlemen competent to their duties. Well, in spite of all these favouring circumstances, to the surprise no doubt of that public which knew no better, the offices in the registry have turned out to be unexpectedly good places; that is, the work is much less than that for which the salaries were to be a compensation. In short, the registry office is but sparingly resorted to—a fact admitted by one of the writers under review. Is it otherwise than a fair inference that the representations as to the legal expense and trouble of the transfer of land were, to a considerable extent, exaggerations? In truth, the law expenses of the transfer of land (the only expenses which have been attempted to be diminished) were not, except in comparatively rare cases, excessive. The surveying and mapping of estates, preparing and circulating particulars of sale, and other forms of advertisement; the commission to land agents and auctioneers, not to mention the stamp duties, form, and always have formed, the real expenses of the transfer of land; and these expenses, except the stamps paid by the purchasers, are voluntarily incurred by the vendors, and incurred because they find, or fancy they find, their account in incurring them.

It appears to be imagined by the gentlemen on

whose writings I am commenting, that under some perverse instinct, the landed proprietors, who alone have a direct and palpable interest in cheapening the transfer of land, are opposed to any diminution of the expense. Such an imputation looks more like a perverse instinct in the fault-finders to make out their case against the landowners. In fact the landowners, great and small, are naturally and necessarily anxious to diminish the expense of the transfer of land, and of all other dealings with it; and nothing short of the fanaticism of partisanship would insinuate the contrary.

Mr. Fawcett, Mr. Leslie, and Mr. Newman all agree in alleging and deploring the absorption of small estates by great estates, and the consequent scarcity of marketable land. No doubt such absorption is constantly occurring in certain quarters; but there is also a countervailing operation, which is no less continuously in progress, namely, the breaking up of great estates into morsels. While there are great landowners, who happen also to have money, they will add to their estates by new purchases when the opportunity occurs; and while great fortunes are made by commerce and manufactures, the owners of such fortunes, when their taste lies that way, will become owners of large landed estates. But the continuance of these great accumulations of land is always at the mercy of the spendthrift or speculative habits of the owners, and these wholesome elements of dispersion are and ever will be in operation; and Mr. Fawcett and his friends are mistaken in fancying that the land laws of England create

any serious impediment to the working of these elements.

The same writers also agree in alleging and deploring the scarcity of purchasable land, and in attributing that scarcity mainly to the law and the practice of settling. I have already stated and shown that settlements do not prevent sales when the parties interested think sales desirable, and they will in general consider sales desirable or otherwise, according to the price offered; so that, in truth, whether a sale be effected or not, depends more on the will of the purchaser than of the vendor. But does this scarcity of land in the market, so strongly insisted on, actually exist? It appears that Mr. Fawcett, Mr. Leslie, and Mr. Newman can never have looked into the advertising columns of 'The Times' newspaper, or of the scores of provincial journals teeming with offers of land to be sold, otherwise they would have known that there is at all times plenty of land in the market; still less can they have made themselves acquainted with the particulars (as they are called, I believe,) under which the sales are made, otherwise they would have known that great estates are constantly broken up into small parcels, and sold in what are called lots, varying in size so as to suit all purses. In fact, in the midst of this alleged scarcity of land, with a plutocracy thirsting to become purchasers, it is very remarkable, that land, when not recommended by some special amenity, can be purchased so as to pay 4*l.* per cent. on the purchase-money. Such purchases are of daily occurrence.

Mr. Leslie quotes Adam Smith, who says:

'Regulations which keep so much land out of the market, 'that there are always more capitals to buy than there is land 'to sell, so that what is sold is sold at a monopoly price; the 'small quantity of land moreover which is brought to market 'prevents a great number of small capitals from being em- 'ployed in its cultivation, which would otherwise have taken 'that direction.'

Would it not have been merely candid, on the part of Mr. Leslie, to notice that Adam Smith thus expressed himself in a country in which really unbarrable estates tail existed (such as have not existed in England since the days of Edward IV.), and were every day being multiplied,—a country, moreover, in which an unusually large portion of the land was in mortmain? Would it not, also, have been worth inquiring whether Adam Smith was not guilty of some exaggeration when he spoke of monopoly price? Either he was so, or the other alternative must be admitted, that even under the most aggravated form of that system of settlement which Mr. Leslie and Mr. Newman so strenuously impugn, the improvements in agriculture have been enormous; for it is notorious that an estate in Scotland, which, in the time of Adam Smith, might have been purchased for 12,000*l.* or 15,000*l.*, would now sell for 80,000*l.* or 100,000*l.* It is clear that the land in the mean time must have been dealt with in a manner beneficial to the owners, and also favourable to the increase of the wealth of the country. This enormous increase in value is true of a country where the law of

primogeniture, and the system of settlement and entail, have been in full operation. And be it understood that I am speaking not of estates of which the value has been factitiously raised by the growth of a great town, but of estates in districts purely agricultural. Apropos to the above quotation from Adam Smith, Mr. Leslie says:

'By one and the same system, the old farmer class of 'proprietors is extinguished, and a farming class is prevented 'from rising, and a non-productive class is maintained, and 'gains ground. The unproductive owners of great estates, 'though heavily encumbered for the most part, are seldom 'actually dislodged, and, when they are, and a rich man buys 'their estates, he does not buy them for immediate profit, 'so he can afford to buy legal advice in his subsequent deal-'ings with them.'

On this, that is the first part of the above passage, I would remark that there *has risen* a very industrious and wealthy farmers' class. And that when an 'unproductive owner' of a great estate is dislodged, that is, when his estate is sold, it may be sold in bulk to a rich man, or it may be, and as often is, sold in parcels to many men. But when a rich man buys, as far as I have been able to ascertain, he goes to work much as the rest of mankind would do in the same circumstances, that is, he sends a surveyor or other competent person to value the estate, and fixes his price with reference to the return which the rents are likely to yield for his outlay. What the 'affording to pay for legal advice in subsequent dealings' has to do with the question is wholly beyond my comprehension.

The extinction of the class of small freeholders who farmed their own estates is a subject of lamentation common to all these writers. They may have been a valuable and estimable class, but there is little sense in the lamentation, and no justice in charging their extinction on the existing land laws. If the owner of one hundred acres of land which he has been in the habit of cultivating himself, finds, or fancies that he can improve his fortune, by selling his land and investing the produce of the sale in trade, or in stocking a farm of three or four hundred acres which he rents; it is the natural consequence that he will sell his one hundred acres, and he will certainly sell to the man who offers the largest price, even though the purchaser be the owner of a larger adjoining estate, to which the one hundred acres are to be added. Do the gentlemen who utter these lamentations say that there ought to have been a law, or that they would now propose a law, to prohibit such operations? Unless they answer in the affirmative, where is the sense, or what is the purpose, of the lamentations? If they do answer in the affirmative, they ought to inform us *what* alteration of the law they propose for the carrying out of their views. If the alteration be not such as to interfere, in a manner wholly new to Englishmen, with their freedom of action, it would appear that it will bear a close analogy to an act of parliament, forbidding, in certain cases, the operation of the law of gravitation.

The *origines mali*, the *fontes malorum*, with all this school, appear to be the law of primogeniture, and the

power of settling land on an unborn child, and the remedy proposed is to assimilate the law of real property to the law of personal property. This assimilation will get rid of the law of primogenture, but it will not get rid of the power of settling land on an unborn child. It is a noticeable fact that Mr. Leslie and Mr. Newman, who speak so bitterly against the power of making such a settlement of land, do not, I think, once advert to the fact that the law with respect to eight hundred millions of parliamentary stocks, four hundred millions value of railway property, all the Bank stock, the India stock, mortgage money, in short all personal property, is in this respect similar to the law with respect to land. The suggested assimilation would therefore fail in its most important branch. This subject of the power of tying up personal estate we would have expected to find at least adverted to, if only for the purpose of distinguishing its effects from the like law as relating to land. To show its importance, I have made somewhat extensive inquiries. On such a subject I cannot pretend to speak with certainty, but I believe that for every acre of inheritable land which is settled, above 100*l.* value of personal property is subject to a like restriction. Though the power of varying investments, usually inserted in settlements by deed or will of personal estate, may be fairly taken as equivalent to the powers of sale in settlements of land, there is no equivalent with respect to settled personalty to the powers in the Settled Estate Act, under which, land as before mentioned, may be sold by the Court of

Chancery. If the power of settling land were taken away, some reasons must be given for retaining the power as to personalty, or if the power of settling personalty be also taken away, it will probaby be found that you are interfering with a practice affecting a larger amount of property than the settled land, and with the interests and wishes of a more numerous, and not less influential class than those who are in the habit of settling their estates.

Mr. Leslie's language is :

'There is one way to remedy the old and the new evils 'together, and at once to purge our jurisprudence and emanci- 'pate the land from burdens and trammels, that is, to extin- 'guish the force of settlements as binding and irrevocable 'instruments, save as to a wife. And to enact that each 'successive proprietor shall take the land he succeeds to free 'from any restriction on his rights of proprietorship; and 'further to make provision that all lands left burthened with 'any charges, shall be sold immediately on the death of the 'owner, to pay off the incumbrance.'

Mr. Leslie adds, that 'a moment's reflection might satisfy an unprejudiced mind' of the many evils of settlement, and in effect of the expediency of his suggestions. Whether Mr. Leslie's own mind be prejudiced or unprejudiced I will not express any opinion, but I doubt if he gave 'a moment's reflection' to the extent to which his proposal for immediate sales to pay charges would interfere with arrangements of a perfectly legitimate and very convenient character. Why should a younger child be compelled to receive his portion and find a new security, when he would rather

leave it on the estate on which it was originally charged? and why should a mortgage for a fixed term be no longer practicable?—which would be the effect of the proposed law! Is Mr. Leslie aware of the amount of property (including, perhaps, half the invested capital of all the insurance companies of the country) which is, with advantage to all parties, so invested? These startling proposals of Mr. Leslie are adopted by Mr. Newman; in fact he concludes his paper by quoting, with full approval, the above extract. Again, Mr. Leslie suggests as a remedy for the assumed evils, 'a limitation of the amount of land that any single individual shall take by inheritance.' I do not anywhere find that even Mr. Leslie proposes to abolish the power of devising, and if that power be left, whatever enactments be made with respect to land in the case of intestacy is of the least possible importance. As the law of devises now stands, under which law a will, devising in general terms, affects all the land to which the testator may be entitled at his death, an intestacy as to land is simply a rarity, occurring, in fact, very seldom where the intestate is not under some disability. The proposed enactment, therefore, would be of the slightest possible effect for good or for evil, and, considered as a remedy for the general evil complained of, would be simply ridiculous. But if Mr. Leslie means by 'taking by inheritance,' to include taking as a successor by any form of limitation under a settlement, he will admit that he expresses himself so inaccurately that I am not justified in imputing that meaning to his words, and,

therefore, abstain from those comments which a measure framed on that construction would provoke.

With respect to the power of devising, which, so far, I do not see that it is proposed either to take away or to restrict, its bearing on the law of primogeniture is all important. It is possibly true that the existence of this law is the parent of that feeling generally prevailing in England to settle land on the eldest son. Such a feeling undoubtedly exists, and has been the growth of many ages. It will take as many ages to eradicate it, and if the right of devising be left intact, the abolition of the law of primogeniture, and even the abolition of the right of settling on an unborn child, would be of very slight importance.

Whatever sense Mr. Leslie attaches to his words, *taking by inheritance*, if he be aware of the number and extent of the questions which would be involved in the limiting of the 'amount of land' which one individual could so take, he is a bold man to make the proposal so lightly. Mr. Newman says, p. 120:

> 'It is the least of the objections to this policy (that is, the 'law of primogeniture and the practice of settling) that it 'gratuitously withdraws England from the main-stream of 'European progress.'

This is one way of putting the matter, but suppose it be put thus, which is more like the true way of putting it:—Under this policy England has been in advance of all other European countries in most of those particulars which are supposed to constitute, or to flow from, good government, such as commerce, manufactures,

agriculture, civil and religious liberty, including a free press, full liberty for public meetings and free discussion. Other European countries, in emulation of England, are, I hope, gradually lessening the distance between us and themselves. Why not? I cannot imagine a more despicable policy than that which grudges the advance of other nations. They have hitherto been far behind England, and are, I hope, making greater steps in advance, for they have more ground to win. But if it be intended that England is not making progress, is standing still, that assertion is wholly groundless.

One evil is very strongly insisted on as a fruit of the law of primogeniture and the law and practice of settlement, namely, the restraint upon the free growth of towns and their overcrowding. It is asserted that from these causes land is not to be had to increase the area of towns, and thence overcrowding, misery, physical deterioration and demoralisation.

Mr. Newman states the case in the following glowing terms: p. 118.

'Immense unapproachable estates, overgrown demesnes, 'restricted rights of proprietorship, defective titles, and other 'causes, keep land out of the market, keep manufactures and 'trades from many natural homes for their settlement, and 'imprison them within bounds where space is at once in-'sufficient and extravagantly dear.'

Mr. Leslie adds:

'The evil has indeed been enormously increased by the 'merciless encroachments of companies powerful in parlia-'ment, with the instinct of the landed interest on their side.'

Such is Mr. Leslie's language. These imputed instincts of 'a landed interest' are of the most inexplicable description. Though it seems that this interest is poor and embarrassed, it sets itself resolutely against its own pecuniary advantage, besides giving its weight on the wrong side, where its interference must be purely gratuitous; for I think it must be impossible to discover any reasonable ground on which the instinct of 'a landed interest' should engage it (as Mr. Leslie seems to say it does) on behalf of the underground railways. With respect to its impeding the extension of the area of towns, take as a specimen of the kind of argument by which Mr. Leslie supports his case, when he says:

'A wealthy manufacturer deplored to the writer of this 'paper *some years ago*, that he could not extend his manu- 'facturing premises where he lived, and had been driven to 'invest a large capital in a factory many miles from his own 'eye, because he could not obtain the security of a sufficient 'lease from a proprietor of the soil who had only once visited 'his immense estate, and had not even a residence upon it.'

In other words, it appears that *some years ago* a manufacturer poured into the sympathising ear of Mr. Leslie his version of his failure in getting precisely the spot of ground which he wanted to enlarge his business premises. That the owner of the desired spot had a large estate, that he had never visited it but once, and had no residence upon it, seem to be circumstances wholly irrelevant, and introduced only to aggravate the terra-phobia. We cannot collect whether the failure to get a sufficient (perhaps the apter word would be *satisfactory*)

lease arose from the perversity of the landlord or from the defects of the settlement under which he held; but we are told that the landlord had a large estate, visited it only once, and had no residence upon it. We are told, moreover, that the manufacturer was wealthy. We have not got the landowner's version of the story (which would probably somewhat alter the aspect of the transaction), but only Mr. Leslie's report of the some-year-old oral narrative of the manufacturer. Assuming his narration, however, to be literally correct, who doubts that there may be a perverse owner of land who will not lease or sell to another the precise spot which the other desires to have, or that the other will not accept, as sufficient, the lease which the owner has power to grant, and will refuse to go to the expense of having the impediment removed? Is it other than egregious trifling to put forward such a case, as a grave argument to revolutionise the land laws of the country? Has Mr. Leslie ever inquired as to the cost of land for building purposes in the environs of Paris, of New York, or even of Chicago? If he had inquired he would have found that impediments to the enlargement of towns spring from other causes than the law of primogeniture, or the English practice of settlement. I cannot doubt that a gentleman so largely instructed as Mr. Leslie appears to be, is perfectly acquainted with the state of facts to which I refer. Mr. Leslie is, as above shown, much given to attributing certain unaccountable instincts to 'the landed interest.' Will he pardon me for suggesting that his entire silence as to the cost of building land in Illinois forces on the mind a suspicion that nothing

short of a revolutionary instinct creating a narrow one-sided fanaticism fatal to temperate and rational discussion prompts his assertions and conclusions? There is no class of the community which has so direct, so obvious an interest in the enlargement of towns as the owners of land. As a town in its growth approaches a landowner's estate he feels and fully appreciates the increased value of his property. To imagine that a landowner could repel such obvious good fortune, is to deny that landowners have the ordinary feelings of mankind. The same instincts will make landowners well-pleased to encourage the planting of new towns in new localities. To believe the contrary, we must invent some new theory as to the motives of human actions. Let it not be understood to be contended that there will be no such thing as a fantastic or perverse landowner who will sacrifice his pecuniary interest to some whim or prejudice. Of course such cases will occur in England or in any other country; but who would expect grave arguments to be founded upon such cases, as if they were the general rule instead of being, as they are, the rare exceptions. Mr. Leslie's story of the wealthy but disappointed manufacturer, and the absentee landowner, may be conceded to him, but it belongs peculiarly to Mr. Leslie and his school to draw general conclusions from such a case, as if it represented the ordinary course of events.

It is assumed that the state of agriculture in England is bad, and that its imperfections are occasioned by the land-laws, by the extent of the farms, and by the absence of leases. And that state is contrasted, greatly

to its disadvantage, with a *petite culture* of peasant proprietors, in certain selected localities, and, as usual, general deductions are drawn from particulars infinitely too few and too narrow to justify them. A strange mistake is made in concluding, that because there is a larger resident population in a given area where the *petite culture* prevails, than in a like area where the farms are larger, the *petite culture* must be the more productive, disregarding altogether the larger surplus produce, which may proceed from the large farm cultivation to feed a population *elsewhere*.

The general objection to the writings both of Mr. Leslie and Mr. Newman, the vice which destroys their utility for any practical purpose, is that they, in every instance, overstate their case. The agriculture of England is not bad, but like the agriculture of every other country it might be better. Relatively to other countries it is good, and is every year improving. Large farms prevail in some counties, in others the farms are comparatively small. In many cases there are excellent reasons for the difference, in other cases the difference exists without any apparent reason. The manifest advantage of large farms in certain cases created some years back an undue preference for that system in quarters in which it was neither necessary nor desirable. My own opinion is, that farms ought to vary in size, so that a small farm should be accessible to any farm-labourer, who from his industry and prudence is fit to manage it. It is the natural road by which he is to rise, and I fully agree

that no system is right under which the individuals of any class are excluded from a fair chance of improving their condition. Far be it from me to write or say one word which would tend to the withholding from the labouring man of any advantages which can be conceded to him consistently with the well-being of that society of which he is a part, and of which the labourers form necessarily the most numerous class, and form, in my view, the class whose well-being is of the first importance. There is no man of just feelings who would not impart the advantages of the few rich to the many poor, if such transfer could be made; and such a man would only be withheld from the attempt by the belief that the advantages would never reach the poor, but be lost in the act of transfer. Nevertheless, sincere sympathy for the labouring man forms no reason for exaggerating the evils of his lot. Mr. Leslie says:

'In no other civilised land, and even in few savage lands, 'has any class of human beings a look so cheerless, so un-'reasoning, so little human as the English agricultural 'labourer.'

Now the position of the English agricultural labourer is, and, for the last thirty-five years, has been this: a greater amount of unskilled, highly-paid labour has been open to him in his own country than ever existed at the same time in any country of no greater extent. The facility of emigration to another country has been, and is, greater than the world has ever known. And an Englishman has this rare advantage, that he can choose his climate and his soil, and find himself in his

new home, among men speaking his own language, and not materially different from him in habits of life. Bearing this in mind, and also the extreme difficulty of procuring by enlistment the necessary number of soldiers, it is difficult to believe that, as a general rule, the agricultural labourers' case can be so exceptionally miserable as Mr. Leslie says it is. With respect to the 'cheerless look' to which that gentleman adverts, he should bear in mind that a cheerful look is not a national characteristic. '*Ils s'amusent tristement, selon leur nature*,' is as old as Froissart. Indeed, when reading the doleful jeremiads of Mr. Leslie and Mr. Newman, on the laws and condition of the richest and freest country in the world, I am tempted to think that these gentlemen are not in earnest, but are writing rhetorical exercises, and that, in handling their theme in this dolorous manner, the national temper being in them unusually strong—*ils s'amusent tristement, selon leur nature*, and that is all. But I do not question that mistaken theories have led to practices injurious to the agricultural labourer,—practices which are being gradually amended,—amended by that which, in a free country, is the true source of all practical improvements, full unfettered discussion.

On the subject of granting leases, the impugners of the landowners assume the character of, and are naturally advocates, of the farmer, for the lease is a one-sided bargain; it seems well known that the tenant finds little difficulty in relieving himself from his obligation, while the landlord is bound by his. The prac-

tical importance of the question is much exaggerated, for in those parts of the country where the farmer is generally tenant from year to year, he is, as a rule, under no fear of being disturbed while he acts up to his own bargain, and would set less value on a lease than his advocates suppose. It is not the practice to have frequent valuations with a view to the raising of the rent on such tenancies. The absence of leases, however, is not chargeable on the law, as there is hardly such a case as that of a settlement which does not contain a power of granting agricultural leases. And it may be fairly contended, that the question should be left to the parties interested, that is, the landlord and the tenant to make their bargain in their own terms. It sounds very plausible that leases favour good husbandry, for a man who, by his lease, secures the fruits of his own improvements, will improve. That is true, but he is also much given to taking care not to make improvements which he will not exhaust before the end of his lease. It is, moreover, true, that a tenant from year to year who is an improving tenant, is never disturbed. As a general rule, those great estates which are so obnoxious to the gentlemen on whose views I am commenting, are occupied by a body of tenant farmers, forming a far easier and more prosperous class than the yeomen occupiers of their own freeholds whose disappearance is so much lamented.

I am far from contending that the questions agitated by Mr. Leslie and Mr. Newman are unfit for discussion—that is, that the discussion of them is improper. What

I object to is, the impassioned, one-sided, and dogmatic temper in which those gentlemen advocate their own views, the sedulous exclusion of all considerations which do not help their own argument, and the accusatory, querulous tone in which that argument is urged. Mr. Newman, p. 123, says:

'In reality, what the law produces is not an aristocracy but 'a plutocracy; without having achieved the smallest public 'service, the capitalist finds himself in a position to play the 'Rhadamanthus among the unborn.'

Surely this is a very deep-mouthed way of saying that a capitalist ought not to be able on his marriage to settle his land or his money on his childen's children. This sort of language may impress persons who have little knowledge on the subject under discussion, but it cannot edify them much. Far be it from me to criticise as a matter of taste the writings of gentlemen who are such masters of style, and who, in literary skill, are so far above my mark. But there is nothing which prevents the subject of the land laws from being discussed in plain language, without figures of speech, which in such cases often perplex and never simplify the argument. I may illustrate this by a passage from a speech of the first Lord Plunkett. The passage is cited by Lord Brougham with an exaggeration of praise for its picturesque beauty, its strict application to the matter in hand, and its happy illustration of the argument. I think I have found the passage no less than three times cited by Lord Brougham, and always with unbounded commendation. It occurs in a speech on the subject

of the statute of limitations—that is, on the policy of fixing a time after which adverse enjoyment of land shall give a good title. Lord Plunkett says :

'Time, with his scythe in his hand, is ever mowing down 'the evidences of title, wherefore the wisdom of the law plants 'in his other hand the hour-glass by which he metes out the 'periods of possession, that shall supply the place of the 'muniments his scythe has destroyed.'

This is very fine and very striking, no doubt. But it is to be regretted that it is pure nonsense ; and it is beyond measure strange that its absurdity should not have been seen by its learned utterer Lord Plunkett, or by its admiring critic Lord Brougham. The hour-glass meting out the periods of possession, is not for the purpose of supplying the place of the muniments which the scythe has destroyed, but just the contrary, that is, to protect the man in possession against muniments which the scythe has failed to destroy. Such are the perils of fine writing. I quote the passage as an example of the danger of discussing in a heated and grandiloquent rhetoric matters where calmness and plain language would be more appropriate.

Mr. Leslie and Mr. Newman both write in the character of instructors of the reformed parliament—anticipating and counselling great, and (so far as their subject is concerned,) revolutionary changes, and that in a style quite suitable to the advocacy of revolutionary measures. Is it not possible, however, that a reformed parliament may not regard matters from their point of view? The Prince of Condé, speaking I think to De

Retz, of the chroniclers of the Fronde, said: '*Ces coquins nous font agir et parler comme ils auraient fait eux-mêmes à notre place.* Let us hope that a reformed parliament will be more respectful towards its volunteer advisers! But above all, let us deprecate their counsels being subjected by a reformed parliament to the indignity which Horace Walpole said that Europe would offer to the quarrels of David Hume and Rousseau, when the former expressed his fears that that quarter of the world would be filled with their disputes.

POSTSCRIPT.

Since the above was written, I have seen the article, in the July number of 'Fraser's Magazine,' by Mr. R. Arthur Arnold, with the title 'Mr. Cobden and the Land Question.' Mr. Arnold discusses the same questions as Mr. Leslie and Mr. Newman, and, in the main, participates in their opinions; but he seems capable of looking at both sides of a question, and so writes calmly, and dispenses with the ambitious and *Burke-Scapin* style with which the two latter gentlemen clothe, perhaps I should say decorate, their speculations.

In conclusion, I may remark, that there is a party—in a literary point of view a very active party—who

regard reform in Parliament as valueless unless it produces such changes as will amount to revolution. It is one of the many blessings attending a free press, that the country has full warning of the existence and views of such a party. In the last number of the 'Fortnightly Review,' there is an article, by Professor Beesly, on the Trades Unions Commission. The article is an out-and-out defence of the trades unions. At the end comes a postscript, in the following words:—'At the moment of going to press, the terrible Sheffield disclosures are taking place;' and after a passing notice of the willingness of the advocates of the unions to hang Mr. Broadhead, the professor adds: 'But I am glad that I have just time to declare deliberately and emphatically that there is not a word in the above remarks that I desire to withdraw or qualify.' Of course not. A brave man never repents. We have since heard Mr. Beesly's Exeter Hall speech. It is well that the country should know that it has its sucking Dantons. France had no such warning, till it was overtaken by the deeds of 1792 and 1793; deeds, discrediting a just and necessary revolution, blasting many of its expected fruits, and postponing to this day many of the benefits which would otherwise have followed it.

APPENDIX.

VERILY, the dammed-up waters are ready to burst. The deluge is heralded by the cry, 'Free Trade in Land; Protection for Labour.' It is assumed that great constitutional changes are about to provide the means of gratifying all popular desires, however extreme and conflicting. Zealotry anticipates the speedy removal of those barriers that 'keep the wild flood confined,' and calls on the restless elements of disorder to gather their forces for the rush. The writers and declaimers on the land-laws of England belong, with a few honourable exceptions, to a school which aims, like the trades-unions, whose cause, indeed, it espouses, and whose logic and style it affects, to wield the engine of a reformed parliament for ultra-democratic and despotic purposes. Permissive measures would not content it. Rendered rabid by a peculiar political virus, stung by disappointment,* it demands, with arrogant infallibility, compulsory registration, compulsory leases, compulsory compensation for voluntary improvements, the compulsory building of suitable rural labourers' cottages, and it would hardly stop short of compulsory sales† or even the compulsory distribution of estates;‡ and as, on failure of such rather violent experiments, we are threatened with others yet more radical, the crowning good may be confiscation.§

* It was fondly hoped that a *demonstration* of landowners would inaugurate Lord Westbury's registrars.

† *Questions for a Reformed Parliament*, pp. 90, 93, 104, 105, 112, 125, 126. *Fraser's Magazine*, Feb. (1867), pp. 148, 161, 162; July (1867), pp. 80, 84, 90.

‡ *Fraser's Magazine*, July (1867), p. 88.

§ 'These questions are but the mere rudiments of social reform.'—*Questions, &c.*, p. 126.

The land does not belong, it seems, to the individual owner, nor to the state, but to the state as ordered and coerced by the dogmas and decrees of the school. It would extinguish the rural lord to organise a worse than feudal tyranny. If its reverence for the institutions of the country be little, its regard for truth in advocating a cause so sacred would appear to be yet less.

It is proposed to offer here some cursory remarks on the recently published essays of Mr. T. E. Cliffe Leslie,* Mr. W. L. Newman,† and Mr. R. A. Arnold,‡ on our land-laws, but chiefly on the speculations of the two former writers.

In a long desultory preamble, Mr. Leslie sets forth a series of grievances, which, according to his theory, have inordinately swelled the mural population, and sunk the *residuum* of the rural to its present degraded chap-fallen condition. This state of things, the pauperisation of the country, and the overcrowding of the greater towns, is contrasted with the Arcadia of some former period (but of which we do not remember that any authentic record has been preserved), and is attributed mainly to the assumed fact of 'the little land 'which enters the market being artificially dear, and of the 'greater part never entering it at all from one century to 'another.' Finally, this acre-less state of the land-market is due to some 'limitation' or 'restriction' imposed by our land-laws.

Now, the reader of articles of the class under consideration should be warned against too implicitly trusting to the accuracy of the premises from which conclusions are there drawn, even as regards legal matters affirmed by writers of presumably competent knowledge. From the gravamina of Mr. Leslie, we extract the following passage:—'Nor does 'what has been said exhibit the whole change for the worse 'in the agricultural labourers' lot. "A hundred and fifty

* *Fraser's Magazine*, Feb. (1867), p. 143. † *Questions, &c.*, p. 79.
‡ *Fraser's Magazine*, July 1867.

‘ “ years ago there was scarcely a parish without a considerable
‘ “ extent of common, on which every householder was at
‘ “ liberty to turn out a cow, or a pig, or a few sheep, or
‘ “ fowls. The poor man, therefore, even after the loss of
‘ “ the fields attached to his cottage, might, nevertheless,
‘ “ contrive to support his family with plenty of milk and
‘ “ eggs and bacon at little or no expense to himself.” * The
‘ process of enclosing common land began in the reign of
‘ Anne, on a scarcely perceptible scale, increased steadily in
‘ the two following reigns, and afterwards with such rapidity,
‘ that between 1760 and 1834, nearly seven million acres had
‘ been taken from the public property of the poor and added
‘ to the private property of the rich.’† The simplicity, the philanthropy, the maudlin sympathy and lacteal commiseration of such passages, require only the trick of metre and the tag of rhyme to make them worthy of Wordsworth in the soft-eyed days of his lyrical innocence. *Dele* the pig, and we have not in Virgil or ‘ Goldie ’ a sweeter assemblage of rural images.‡ If such was the aspect of merry England a century and half ago, well may we turn a retrogressive eye on her green youth, and despairingly exclaim, ‘ *O Rus,* ‘ *quando ego te adspiciam?*’ But the unblushing mendacity of the passage is yet more astounding. Does not Mr. Leslie, as a lawyer, or dabbler in law, know that the soil of the so-called common belonged to the lord of the manor or to some other person as a private owner, subject only to certain commonable rights belonging to other persons, who, in respect of those rights, were equally private owners, that those rights were defined and regulated by law, and, as well as the soil, were dealt with by alienation, settlement, and devise, as

* Thornton’s *Over Population and its Remedy.*

† *Fraser’s Magazine,* Feb. (1867), p. 149. See *Questions, &c*, pp. 107, 110.

‡ Mr. Newman’s pastoral pipe had preceded in a similar strain—*amant alterna Camœnæ*:—‘ The common arable land, with its belt of pasture and woodland, which formed so prominent a feature in the English landscape of last century, largely disappeared, and its wrecks (!) went to augment the mass of land already in the hands of the large proprietors.’—*Questions, &c.*, p. 92.

private property; that in no sense, except the vulgar popular sense in which the claims of the three millions to Wimbledon Common and Hampstead Heath have been so dishonestly urged, were 'nearly seven million acres' ever 'the public 'property of the poor,' or 'the labourers' common fund!' (phrases too obviously introduced to gratify the periodical craving for sentimental cant); and that he (Mr. Leslie), speaking at once as a well-read lawyer, sound political economist, and veracious teacher, ought rather to have said that these seven millions had been taken from the unproductive state incident to the joint ownership, but discordant interests, of the lord and commoners, and added to the *fructifying* fund of the community?* The substance of Mr. Leslie's general argument may not be materially affected by this particular instance of unfairness, or rather untruthfulness, in the allegation of facts, but it is important to put the reader of these one-sided advocates upon enquiring for himself how much of their arguments is based upon the *suggestio falsi* and *suppressio veri*. By Mr. Leslie's notions about byegone rustic beatitude, we are forcibly reminded of the *Deserted Village* and its political economics, of that Irish Auburn which (paradoxical as it may appear) was laid waste by capital and depopulated by enterprise, exhibiting the strange spectacle of Parson, Schoolmaster, Innocence and Mirth, all flying before the demon Progress.

Assuming the starved condition of the land market to be the main cause of at once rustic and civic misery, assuming, too, that starved condition to result from the 'limitation' fixed by the land laws—what, we ask, is that limitation? It is involved in the rule of law, founded on a principle of policy, and finally settled, in our own time, by solemn adjudication of the highest tribunal, that (to state it broadly and roughly) property may be settled so as to go to consecutive takers, born and unborn, first for partial interests (as a life

* Mr. Leslie suppresses the fact that, in allotting the lands on inclosure, compensation was made for the common rights.

interest or a term of years), and ultimately in absolute proprietary right, for a period commensurate with a life or lives in being (a child en ventre being for the purpose of this rule treated as born) and twenty-one years; in other words, the whole and absolute disposable interest of the settlor must vest in possession in some person or persons on or before the expiration of that period, and does ordinarily so vest *within* that period; nor can the property be by any device of the conveyancer withdrawn longer from the market. This rule is universal,—it has not any exclusive application to *land*,—it is not distinctively the land law, but rather, comprehensively, the law of the land, governing the settlement of every species, as well of personal property as of real property. Of course the ultimate right may vest in one or many, (and if in many all must concur in selling,) or the period of complete alienability by the takers may be postponed by minorities or other incapacities; but these are accidents which may equally occur to the unsettled fee, and against the latter of which, moreover, legislative provision has been made. The limitation fixed by the above rule, as regards the corpus, (the accumulation of income being confined within reasonable bounds by a modern Act,) has been proved by experience to be consistent with the exigencies and convenience of families, generally, and with a reasonably provident care of an expectant offspring, and to be not inconsistent with commercial enterprise and large enlightened views of public policy. It has been settled, not on narrow technical grounds, much less with any view to the maintenance of monarchical or aristocratic institutions, but for the advantage (gratification, if you will,) of the proprietary body, great and small, high and low; and so far from being the jealous land wall that excludes the commonalty from the preserves of a few swollen territorial lords, it is the broad, though measured, gate opened by the law to all alike, and judging from the general prevalence of settlements, pre-nuptial, post-nuptial, purely voluntary, and testamentary, embracing every species of property, we conclude

that it is no less acceptable to the small and low than to the great and high. It has no feudal rust; it is consecrated, not by age or precedent or prejudice, but by free, deliberate, national adoption in our own trade-fostering times. Speaking of these settlements in the mass, whether of land or money, realty or personalty, they have nothing to do necessarily with the law of *entail*. If that law were swept away to-morrow, settlements nearly as strict, even of land, might still be made; the substantial, practical difference between fee simple and fee tail consisting chiefly in the special form or mode of assurance (now ready and cheap) prescribed by a late Act for facilitating the alienation of entailed estates. It is true that estates are perpetuated, or rather long preserved, in families by force of re-settlements, such re-settlements being, however, nothing but the exercise from time to time of the absolute proprietary dominion, reviving, after short intervals, over the *entailed* acres, which, at each crisis of their devolution, the same volition might have sold and dissipated. Nor, during those intervals, is the land ordinarily unsaleable; on the contrary, as every attorney's clerk who has passed an examination would inform Mr. Leslie, it may in the great majority of cases be brought into the market. Unless, therefore, Mr. Leslie contemplates some compulsory process, or some nostrum to inspire landowners with eagerness to sell, as well as the landless with desire, bringing with it the means, to purchase, it is difficult to see what material facilities he would superadd to the provident devices of the law and legislature. It may be admitted that the machinery provided by the Act to which we have referred for facilitating the barring of entails is itself susceptible of simplification, but it would be idle to charge on the law of entail, as it now stands, any appreciable portion of the alleged difficulties in the way of the alienation of land.

The question, if to be entertained with a grasp worthy of a cosmopolitical professor, must take a very much wider range. It must embrace all property, all classes, all condi-

tions. It involves nothing less than the reconstruction of our common law, statute law, and equity, as respects proprietary rights generally. The true question,—though our self-constituted teachers appear unable or unwilling to comprehend it in its breadth and depth,—would seem to be, whether the limitation or restriction fixed by the rule already stated (or rather the privilege which that rule defines) shall or shall not be dealt with, and in what manner, by the forthcoming legislature? whether a rule so based, so matured, so sanctioned, and of such wide influence, shall be experimented upon by caprice and charlatanism?

It is true of legal, as well as of political disquisitions, that when the advocates of extreme opinions attempt anything practical, they generally betray their incompetence; and it is from a sense of the difficulty, as well as danger, to the *cause* of pushing their principles to the working point, that they commonly either abstain from the suggestion of remedies or conclude with the enunciation of some vague generalities. What remedies does Mr. Leslie really contemplate? Would he abolish, not only entails, but every species of ownership less than the immediate and absolute dominion? Are there to be no life interests, no remainders, no future destinations of any kind, vested or contingent? He says, 'there is one 'way to remedy the old and new evils together, and at once 'to purge our jurisprudence, and to emancipate land from its 'burthens and trammels, and that is to extinguish the force 'of settlements as binding and irrevocable instruments, save 'so far as a provision for a wife is concerned; to put family 'settlements, save as to a wife, on the same footing as wills, '*ipso facto* void upon marriage, and revocable by any sub-'sequent conveyance or will; to enact that every successive 'proprietor shall take the land he succeeds to free from any 'restriction over his rights of proprietorship.' Nothing more wild and vague than this ever proceeded from philosopher or jurist. 'Marriage' of whom?—'revocable' by whom?—

the settlor? It may sound strangely on this side of the water that a marriage settlement should be avoided by the very event which induced it. Is an instrument which is revocable at the pleasure of any person or persons, other than its objects, any settlement at all? Is it meant that settlements by will shall, after the testator's death, be irrevocable? Does Mr. Leslie propose to restrain the testamentary power? if not, what would be the practical value of any change in the law of inheritance? Is Kent, where, for the most part, distributive male descent prevails, more healthily *yeomanised* than those counties whose peasantry rots under the withering influence of primogeniture, or flies to one-roomed citizenship from the malaria? Is there no concentration of land in Kent?* Does Mr. Leslie adopt Mr. Bright's notion, that equality is equity, that if a man has ten children variously circumstanced,—this provided for by a bachelor uncle, that by a maiden aunt, another an imbecile, daughters married to bankrupt or profligate husbands,—his property shall necessarily go to all the ten, share and share alike, and for absolute unprotected interests?† And, as regards the land question, how would this change antedate the blessing of a small cowkeeping yeomanry?—a blessing, indeed, which would seem to be a possibility far remote, as it involves the repeal of so many Inclosure Acts, and the restoration of some nine millions of cultivated acres to a state of nature.

* Mr. Arnold speaks of 'the high sanction, the reverenced teaching of the law, in every county but one.'—*Fraser's Magazine*, July (1867), p. 84. 'It is' (says Mr. Arnold) 'the lower class of proprietors for whom the assimilation of the law to that of Kent should be *demanded*.'—*Ib.* p. 85. Before this experiment is tried, it would be as well to enquire whether partible descent exerts any and what influence over settlements and wills in that portion of Kent which is subject to the custom, and whether the owners of the disgavelled portion are not better content under the 'teaching' of the *general* law.

† 'What' (asks Mr. Arnold) 'is the duty of a parent in regard to the disposition of his property? This the legislature should decide!'—*Fraser's Magazine*, July (1867), p. 84. The answer is plain: his duty is to adapt the disposition to his own family circumstances, and to exclude the necessarily undistinguishing decision of the legislature.

The land must be sold, and even if sold in lots, may be bought by one capitalist (probably not an aristocrat, for aristocracy is more frequently the seller than the buyer), or it may be taken at a valuation by one child.

This school talks of dividing an intestate's land equally among his '*surviving children*,' ignoring, in terms at least, the issue of predeceased children.* Have the writers adverted to the infinitely variable circumstances of families, and asked themselves what they really mean? It happened that a late able Law Reader was in company with half a dozen well educated married laymen, who joined in ridiculing the idea of a family man requiring professional aid in making a gift of his property among his 'children,' as by *that* term the objects would be unmistakeably ascertained. But when the effect of its use, with reference to the state of the family of each, came to be clearly set before them, all confessed that it had not occurred to them to consider it in its various aspects, and that, in each instance, its unadvised use would disappoint the intention.

Does Mr. Leslie seriously think that his tamperings with the law of settlement would avail to insure to the country primitive ease and competence, and to the towns, elbow-room; to the woodbined cottager his paddock, cow, pig, common fund, and 'scrannel pipe,' and to the enfranchised lodger his spare room—withal to revive that fine model of robust, unschooled wisdom, the defunct yeoman, *abnormis sapiens*; and (if, like these writers, we may hazard a stroke of the sublime) to place the cereal, oaten crown of Alfred on the brows of Victoria? In short, the objections and remedies of speculators like Mr. Leslie tend, under the specious veil of liberating entailed lands and modifying the law of settlement, to such radical changes in the system of our law of *property* as would far outrun any reform in the 'representation of the people' framed with a

* *Fraser's Magazine*, July (1867), pp. 80, 85, 87.

due regard to the expediency of 'standing' (with whatever infirmity of footing) 'on the old lines of the constitution.' Whether such changes would be agreeable,—not to the lords of Parliament, or to the greater lords of Birmingham, Manchester, and Leeds, those mightiest of land-gluttons, (for *that* is *not* the question,) but to the more humbly-estated community,—to the genius, habits, and wishes of the people of the United Kingdom, may well be doubted by the simple-minded. But these are enquiries not apt to trouble the professorial intellect, exalted in transcendental abstraction, and intent on the realisation, at any sacrifice, of some pet philosophic vision.*

But it is really a waste of words to expend them on such futilities. The whole fabric of grievances and remedies is built on the false assumption that the bulk of the land of the United Kingdom is withdrawn from the land market, and is so withdrawn, not by the indisposition of its owners to sell, but by their inability to confer a marketable title. The dispute is less about dogmas than facts. Such an assertion as that 'little land enters the market' is simply untrue, and best met by a flat denial and reference to the advertising columns of the *Times*.

Here, from sheer weariness of Mr. Leslie 'On the Land 'System of the Country,' we had broken off, but we linger to drop a tear over 'the pale youth (behind counters) which 'might have recruited the ranks of a *blooming* tenantry,' over 'the children and descendants of the *fading* yeomanry,' over 'the rural clergy and country gentlemen themselves,' over 'the many shops and trades that might have prospered 'well in country towns,' over 'the families of every middle 'grade whose incomes are no longer equal to the costly 'luxury of a country home,'—all these, the miserable results of our land system. Now, taking for once a short excursion

* Mr. Arnold, though not disinclined to sweeping changes, does recognise the expediency of consulting 'the genius and habits of the people.'—*Fraser's Magazine*, July (1867), p. 88.

on the Leslie-Newman hippogriff, we might perhaps view the 'pale youth' in a different light,—see him returning from India or Australia with wealth and honours, purchasing some disentailed domain, expending largely in improvements, and diffusing around him science, hospitality, elegance, and charity. We might contrast such a career with that of the prosperous shopkeeper or trader of the country town, standing, not behind the counter, but with arms a-kimbo at his shop door, except on market days, and then scrupulously weighing out pennyworths of rancid bacon and spurious tea; contrast it, too, with that of the 'blooming tenant,' yoked to Blouzalinda, and rejoicing in the rubicundity of ten 'coheirs' apparent. As to the 'fading yeoman,' have we, then, we might ask, made so very bad a bargain in exchanging *him* for the substantial, better educated farmer? Instead of sighing over the extinction of the race of 'rural clergy' and 'country gentlemen' of the Georgian era, we might wonder who seeks to disturb *their* repose, or that of the painted Briton? And though it may not be obvious to common apprehension how the proposed changes in the land laws would tend to provide 'families of every middle grade' with the 'luxury of a country home,' we might plainly see in

> The villas, with which London stands begirt,
> Like a swarth Indian with his belt of beads,

and in the similarly studded zones of other large dark-skinned towns, that somehow or other the so densely hived 'middle grade' does swarm out and expatiate among the fields and flowers. When had great towns the means of moving and breathing more freely? When did wealth, science, and sympathy unite more earnestly to provide healthy exercise and recreation for the masses? But as grave truths are not illustrated by a blazon of words, any more than old, deep-founded states are to be swept away by a flourish of trumpets, we dismount, and alight on the dirty acres whence we rose.

When we might have flattered ourselves that we had dispersed the array of objections, we are met by Mr. Newman with a 'sentiment.'* And what shall we reply to a sentiment? It is one of those intangible essences which escape in the attempt to grapple with it. Admitting that the land-lock is not attributable to settlement and primogeniture, yet their existence, it is argued, generates a vicious taste, puts it into foolish people's heads to make complicated family provisions, and, in Mr. Newman's swelling phrase, 'to establish in the 'centre of each family a magnificently fed and coloured '*drone*, the incarnation of wealth and social dignity, the 'visible end of human endeavour, a sort of Great Final 'Cause immanent in every family.'† This sounds like the language of the *Beehive*.

This insult is aimed by a writer who, if stripped of his florid disguises, would relapse into sheer nudity, at an assembly which, were it disrobed and shorn of every adventitious aid, would stand ennobled and of mark to all time, by its intellectual preeminence and inherent lustre. Happy, indeed, the community for which such working 'drones,' ranging over the wide fields of policy, science, and humanity, gather and store up, in ordinances of provident wisdom, the richest spoils of 'human endeavour!' Illustrious the 'family' in whose 'centre' there beats the heart of a Stanley or a Cooper! But for the reverence due to the 'Great Final Cause,' we might breathe a prayer that of this august, hereditary hive, (—while another associated hive of fellow-workers quickly runs its periodical course,

'Neque enim plus *septima* ducitur ætas,'—)

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* 'Its (the law's) success in creating a sentiment.'—*Questions, &c.*, p. 91. 'Follow the example the state sets you in regulating intestate successions.'—*ib.* 94. 'The law tells the parent that primogeniture is right, while nature, leading him to love all his children equally (?), contradicts the law.'—*Fraser's Magazine*, July (1867), p. 85.

† *Ib.* p. 96.

some Laureate, to be crowned in the far future, may truly sing in strains like those of the great agrestic poet of old—

> 'genus immortale manet, multosque per annos
> Stat fortuna domus, et avi numerantur avorum.'

But the *sentiment* has, or has not, rooted itself deeply and spread widely. If it has not, no great harm is done; if it has, is it not a fair inference that the state of the law harmonises with our social condition, and finds a response in the feelings and cravings of the people, while not injuriously affecting their interests? And what has been the fate of laws which have denied indulgence to tendencies which may be deemed, by philosophers, such weaknesses? Moreover, is it true that the law's destination of the land on intestacy suggests the course of settlement, or is it not dictated by other considerations?

We see, though indistinctly, through the cloud of Mr. Newman's big words,* that his catalogue of grievances † resulting from the bad laws consists of—1st. The contraction of the land-market; 2nd. The keeping of the lands in the hands of a political proprietary, whence the discouragement of the application of capital to agriculture; this discouragement arising from three causes—1. The withholding of leases; 2. The preservation of destructive game; ‡ 3. The mutilation of the proprietor's own interest in the land; and that his 'broad outline' of remedies is—1st. Assimilation of the intestacy law of real property to that which governs in the case of personalty; (a remedy in itself, practically

* 'The majestic period for which title must be proved.'—*Questions, &c.*, p. 92. 'The moral force of nations is their most precious possession, and we cannot afford to have it shattered and pulverised by a half-humorous cynicism which would defend compurgation and frankpledge.'—*Ib.* p. 95. 'As each millionaire emerges triumphant from the commercial *mêlée*, and by pure weight of capital forces open the gate of the landed paradise,' &c.—*ib.* p. 117.

† *Ib.* p. 111.

‡ 'The *rotund* completeness of the game laws.'—*Questions, &c.* p. 128. Mr. Newman was thinking, naturally enough, of a *perfectly foolish* legislator, but Horace—'totus teres atque *rotundus*'—of a *perfectly wise* man.

nugatory, except in the *sentimental* point of view;) 2ndly. Modification of the mischievous power of settlement; but of which modification he does not seem to have formed any definite notion, for he asks whether it would suffice to prohibit limitations to unborn children? Of any such prohibition, however, doubting the efficacy, he dimly foreshadows the necessity of 'other and more stringent remedies,' and 'among them that proposed by Mr. Leslie.' We have already seen what is the response of that darker oracle.

The *demand* is, first, for assimilation of the laws of realty and personalty, by subjecting the realty to the same law of succession on intestacy which distributes the personalty (but which law certainly does not give it to the 'surviving children'); but as, by degrees, a little light dawns in upon the clamourers, they perceive that something more is requisite, some modification, if not the abrogation, of the law of settlement, perhaps even of the testamentary power. But the *land*, the *land*, is still the password to popularity; nothing is said about any corresponding limitation of the disposing power over personalty; and thus not only would the beautiful idea of a harmonious system vanish, but the divergence would be aggravated.

On the supposition, hardly, however, to be entertained by the wildest visionary, that not only settlements *inter vivos*, but also settlements by will are to be abolished, that, in short, the multifarious forms of ownership in which proprietors of all classes have so long indulged themselves, and *that* concurrently with still increasing national prosperity, little or nothing is to be left but the power of each successive taker to sell and spend, and the tenants' right of improving the landlord out of his fee, we should have, in effect, a perpetuity of entail stricter than that which is represented as now existing, in a succession of virtually life tenants and hungry expectants, with vested rights to be defeated only by getting rid altogether of the subject of property. Yet how, by any milder treatment, is the work of subdivision to be brought about? Neither Mr. Leslie nor Mr. Newman may seriously

desire to push matters to this extreme point, but until they speak out they must be exposed to injurious surmises.

There are other essayists,—such, for example, as Mr. Arnold,—who write with graver thought, with better knowledge, and in a more sober vein. But to one and all we would submit that, as regards the supposed land-lock, the case is palpably overstated; that the alleged obstructive influence of entails, primogeniture, and settlements has little or no practical existence; that the land law cannot be justly and effectually treated as an isolated subject of policy, nor otherwise than as involved in a general reconsideration of the property laws of the United Kingdom, of its whole constitutional system, and its inveterate habits; that the professed end (beginning?) of these writers, namely, the breaking up and dispersion of large estates, would not be attained to any sensible extent by any such alterations in the land laws as they avowedly contemplate, nor by anything short of a social, to be necessarily and speedily followed by a political revolution,—by a fierce struggle for the popularity 'that is run after,'—a struggle (as distinguished from the praise 'that follows,') in which honest enthusiasts would find themselves outbid by professors of a darker school, the abettors and apologists of assassination. The more the subject is considered in all its relations, the more clearly will it appear that such a sweeping result would be inevitable. Indeed, Mr. Arnold foreshadows such a convulsion when he says 'that the cost 'of the adoption of this system (a compulsory distribu-'tion of land) would be a social revolution, with the 'disappearance of institutions to which the English mind is 'habituated, and by which it instinctively prefers to be 'governed.' He does not, indeed, advocate its adoption, but seems to resolve the whole matter into the enquiry, 'How are landlords to be *made* to grant equitable leases?' *

* *Fraser's Magazine*, July (1867), p. 90. 'Laws for *enabling* the landlord to improve will not meet the necessity of the case.' *Questions, &c.* p. 26. (Mr. F. H. Hill on *Ireland*.) This essayist speaks of 'the *right* of the tenant to improvements made *without the landlord's consent*' as an admitted '*prin-*

May not this question be met by another,—How are tenants to be persuaded that such leases as alone a landlord could prudently grant would be such very good things for themselves as to be worth a resort to compulsion? While so many farms are profitably used in the absence of leases, without a murmur on either hand, why this emphasis on leases? Has he ascertained what are the relations of landlord and tenant, what the state of cultivation, and what the rate of progress, in those agricultural districts where leases are almost unknown?

So that, of all this 'hubbub of words' about the land laws, when condensed into plain language, the whole result, *short of that 'social revolution' which supplies the only not nugatory purpose*,—is, 1. Descent in the male line ought to be altered, because primogeniture tends to breed a 'sentiment' by which settlors and testators are influenced, though unconsciously, in their family arrangements; and 2. Landlords ought to be, not enabled, but 'made' to grant leases which tenants do not want.* But, in truth, it is not entail, it is not primogeniture, it is not even strict settlement, against which the combined assault is really directed, but

ciple'! (p. 27). He thinks that 'the abolition of the laws of primogeniture and entail, and *the restriction of the right of settlement*, would *probably* tend to the establishment of more satisfactory relations between landlord and tenant' (p. 26); and that 'there is no *likelihood* that any *revolutionary* change would follow' (p. 25). Pleasant prospects, these! radical legislation on the doctrine of chances! He refers to Mr. Goldwin Smith as having 'recently asserted that in consequence of the entail of the Duke of Buckingham's estates being broken, five hundred (?) freeholders have been called into existence in Buckinghamshire,' (p. 23)—a strange assertion, were it true, to be advanced by those whose lament is that entail has rendered land unsaleable. The Ducal estates (that is, some only,) were sold, not in small portions, and not as a consequence of the breaking of the entail, but because there was occasion to sell them, which occasion not arising, they would have remained, though always saleable, unsold; just as land, generally, enters the market only if, and when, its owner has need or desire to sell, and just as the greater portion of England might enter it to-morrow should such need or desire exist. The special φάρμακον of Doctor Hill is, of course, a peasant-proprietary, to be created, how?—by *Legislation!*

* See the speech of Lord Naas in the Commons, July 26, 1867.

against the right of disposing within the limits now assigned by law, and as that right of disposing constitutes *property*, we find ourselves, when all the mist is dispersed, confronted by the grave question, to what extent, and in what form, shall property in land be longer permitted to exist? This may be a fair problem for a Social Conference, but let us not be blind to its true nature, ignoring the fact that, while it may seem to lie only spit-deep in the soil, it has its roots in the ancient rocks of the constitution. Be assured that the movement, though professedly economic, is covertly, however transparently, agrarian and ultra-democratic. If the outcry does not mean a new edifice on new foundations, has it practically any meaning? If such *is* its meaning, does it touch any sympathising string in the social heart of the country? Is it the voice of a great people; or only the clamour of a few malcontents, aiming to raise a Dictatorship on a perpetuity of partible succession and fixity of tenure?

Unquestionably there *are* hundreds of thousands who have neither land nor money to buy it; but there is plenty of land in the market, and plenty of money in the country. There *is* overcrowding in the busier towns; but it is not more just and reasonable to charge it on the land laws than it would be to charge it on the last census. Unquestionably, too, there are important truths in social economics yet to be thought out. All honour to the thinkers! It is possible, let us hope probable, that among those hidden treasures of philosophy, some cure may be latent for that disparity of lot which all communities exhibit,—for that infirmity of 'flesh and blood' which has hitherto rendered it necessary to the well-being of every society that provision should be made for a *residuum* of destitution. Rare honours will encircle the brow of the gifted discoverer; but, demonstrably, it is not destined to any professor of this school, pursuing the land-law phantom, to win that, the palmiest of coronals.

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